

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

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In re application of: Venegas, Jr.

Serial No.: 09/829,032

Group No.: 3632

Filed: April 9, 2001

Examiner: Wood

For: PORTABLE SIGN SUPPORT APPARATUS

APPELLANTS' BRIEF UNDER 37 CFR §1.192

Mail Stop Appeal Brief
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I. Real Party in Interest

The real party and interest in this case is Frank Venegas, Jr., Applicant and Appellant.

II. Related Appeals and Interferences

There are no appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims

The present application was filed with 10 claims. Claims 2-4 and 10 have been canceled by amendment. Claims 1 and 5-9 are pending, rejected and under appeal. Claim 1 is the sole independent claim.

IV. Status of Amendments Filed Subsequent to Final Rejection

No after-final amendments have been filed.

V. Summary of Claimed Subject Matter

Independent claim 1 resides in a support apparatus comprising a sign having a hollow, elongated post with a rectangular cross section and a plurality of spaced-apart through-holes; and a base comprising a hollow fillable body having a bottom portion adapted to rest on a ground surface and a top portion transitioning into a collar immediately above the fillable body, the collar including a rectangular bore dimensioned to receive the cross section of the post and at least one aperture configured to align with one of the spaced-apart through-holes of the post when it is received into the collar, and a fastener received by the aperture and through holes to hold the sign in an aligned, upright position. (Specification, page 5, line 16; Figure 2).

VI. Grounds of Objection/Rejection To Be Reviewed On Appeal

A. The rejection of claims 1 and 5-10¹ under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,220,740 to Brault in view of U.S. Patent No. 5,833,556 to Ferrari.

B. The rejection of claims 1 and 5-10¹ under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,220,740 to Brault in view of U.S. Patent No. 4,145,044 to Wilson et al.

C. The rejection of claims 1 and 5-10¹ under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,220,740 to Brault in view of U.S. Patent No. 6,348,028 to Cragg.

VII. Argument

A. Claims 1 and 5-9, wherein claims 5-9 stand/fall with claim 1.

Claim 1 stands rejected under 35 U.S.C. §103(a) over Brault in view of U.S. Patent No. 5,833,556 to Ferrari; over Brault in view of Wilson et al.; and over Brault in view of Cragg. In each case the rejection is the same: the examiner concedes that Brault does not disclose "a sign having a ... post with a ... plurality of spaced-apart through-holes," a "collar including ... at least one aperture configured to align with one of the spaced-apart through-holes of the post..." or "a fastener received by the aperture and through holes to hold the sign in an aligned, upright position," but attempts to fill in these gaps by combining Brault with the secondary references "for the purpose of adjusting the height of the stand to accommodate various heights when used as a basketball sign support, a traffic sign, a tennis

¹ Claim 10 was canceled by amendment in January, 2004.

net support or badminton game apparatus,” citing Brault at column 3, “liens 3ff [sic].”² This logic is flawed on several grounds. First, although Brault *does* refer to these other applications, Brault does not infer different heights or height adjustability as the Examiner seems to imply. Second, the Examiner seems to imply that Appellant’s use of these features is for height adjustment but it is not; rather, Appellant’s use of “through-holes,” “at least one aperture” and “a fastener” is to hold the sign *in an aligned, upright position*.

Since Brault neither teaches nor suggests “height adjustment,” the Examiner’s proposed combinations do not add a desired feature to the Brault apparatus; rather, the structures of Ferrari, Wilson et al. and Cragg *replace* Brault’s preferred post-holding mechanism. And since there is no evidence from the prior art to make such a replacement, *prima facie* obvious has not been established.

Brault discloses two perfectly acceptable post-holding structures, at least one of which includes features that teach away from any substitution. To hold the post of Brault,

“the base member 10 is provided with connecting means characterized by a stump member upwardly extending over the top surface of the base member 10 or by an aperture such as 16 illustrated in FIGS. 1 and 5. The post 18 which is adapted to support an item such as the sign 20 in FIG. 1, is fittingly adapted to be mounted in the aperture 16 and be upstandingly retained thereinto. The connecting means is also contemplated as a stump member 56 over which a post 58 is adapted to be slidden thereinto and be retained in an upstanding position. (Brault, 3:6-16)

“The stump member 56, preferably has an indentation 66 corresponding to an internal rib 68 inside the post 58 for ascertaining a predetermined orientation of the post 58 relative to the stump member 56 and the base member 10. Such predetermined orientation may have various uses. In particular, as shown in FIG. 1, it is preferred to orient the plane of the sign 20 crosswise relative to the axle 30 of the wheels 12 so that when the wind exerts a pressure on the surface of the sign 20, the post 18 and the sign 20 will not tilt in the direction of the wheels 12, thereby preventing the stand to move unintentionally.” (Brault, 3:34-45)

As can be gleaned from Brault’s *actual disclosure*, a concern is proper post rotational orientation as opposed to height adjustment. Since none of the cited references provide any better solution in this regard, obviousness has not been established. A *prima facie* case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. See In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore,

² The Examiner apparently means column 3, lines 2-7

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the conclusion that the claimed subject matter is *prima facie* obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on §103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), cert. denied, 389U.S. 1057 (1968).

Conclusion

In conclusion, for the arguments of record and the reasons set forth above, all pending claims of the subject application continue to be in condition for allowance and Appellant seeks the Board's concurrence at this time.

Respectfully submitted,

By: _____

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Date: August 7, 2006

APPENDIX A**CLAIMS ON APPEAL**

1. Support apparatus comprising:
a sign having a hollow, elongated post with a rectangular cross section and a plurality of spaced-apart through-holes; and
a base comprising:
a hollow fillable body having a bottom portion adapted to rest on a ground surface and a top portion transitioning into a collar immediately above the fillable body,
the collar including a rectangular bore dimensioned to receive the cross section of the post and at least one aperture configured to align with one of the spaced-apart through-holes of the post when it is received into the collar, and
a fastener received by the aperture and through holes to hold the sign in an aligned, upright position.
5. The portable sign support apparatus of claim 1, wherein the base has one or more grasping handles.
6. The portable sign support apparatus of claim 1, further including a set of wheels associated with the bottom portion.
7. The portable sign support apparatus of claim 1, wherein the base is fillable with a liquid ballast.
8. The portable sign support apparatus of claim 7, wherein the base is fillable through the bore in the collar portion.
9. The portable sign support apparatus of claim 7, wherein the base is fillable through a sealable opening.

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None.

APPENDIX B

EVIDENCE

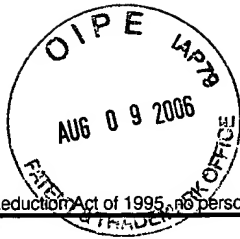
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APPENDIX C
RELATED PROCEEDINGS

None.



PTO/SB/92 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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Application No. (if known): 09/829,032

Attorney Docket No.: IDS-14402/14

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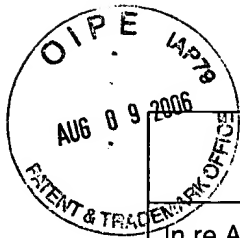
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TRANSMITTAL OF APPEAL BRIEF

Docket No.
IDS-14402/14

In re Application of: Frank Venegas, Jr.

Application No.
09/829,032-Conf. #8394

Filing Date
April 9, 2001

Examiner
K. T. Wood

Group Art Unit
3632

Invention: PORTABLE SIGN SUPPORT APPARATUS

TO THE COMMISSIONER OF PATENTS:

Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed: June 5, 2006.

The fee for filing this Appeal Brief is \$ 250.00.

☐ Large Entity ☒ Small Entity

☐ A petition for extension of time is also enclosed.

The fee for the extension of time is _____.

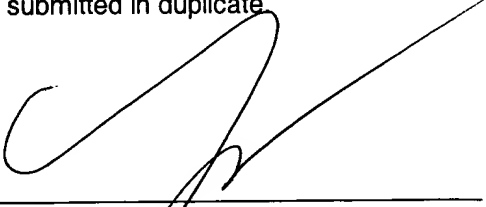
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Dated: August 7, 2006



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